IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.2503 of 2005 .
in
FIRST APPEAL NO.1446 OF 205.

Hiralal Bhima Asmar ..Applicant.

Versus

The Managing Director,
Maharashtra State Warehousing
Corporation, Pune.& Another ..Respondent

Mr.P.N.Joshi for the applicant

Mr.A.N.Chatuphule for the respondent No.1.
Mr.A.R.Patil, A.G.P. for Respondent No.2.

CORAM: S.B.MHASE &
S.R.SATHE, JJ.

DATE : 26th July, 2005

P.C.

1. Heard both the sides.

2. The learned Counsel for the Applicant submitted that the land of the Applicant has been acquired by the Respondent for construction of the warehouse and they have constructed the ware house. He submitted that the amount of compensation fixed by the Land Acquisition Officer is at very meagre rate and even though the said compensation is paid to the applicant, it cannot be said to be compensation in real sense. He submitted

that the Reference Court has properly fixed the amount of compensation and the said amount of compensation has been deposited by the Respondent/Acquiring Body, who has preferred the main appeal. He requested that the amount deposited may be released in his favour. The learned Counsel for the Respondent vehemently opposed for the release of the amount. He submitted that the total deposited amount is Rs.1,94,67,525.14 ps. The learned Counsel submitted that if such a big amount is released in favour of the Respondent and if the Appellant suceeds in the appeal, it will be very difficult or practically not possible to recover the amount from the Applicant, and, therefore, he submitted that instead of releasing the amount it shall be kept in Fixed Deposit till final disposal of the Appeal.

3. After hearing the rival contentions we find that the Applicant has lost his property and therefore, he must get proper compensation for the same. But, in view of the pendency of the dispute, we want to secure the interest of both the parties. Pending the appeal, therefore, we find it appropriate to release in favour of the Applicant, 25% amount out of the total amount deposited without any surety. Further 25% amount to be released on furnishing the solvent surety, and if the remaining 50% amount is claimed by the Appliant, the

same shall be released in favour of the Applicant on furnishing the Bank Guarantee of Nationalised Bank which will be continuously operating till the final disposal of the appeal, Therefore, we pass the following order:

ORDER

a) The Civil Application is partly allowed. The Registry is directed to release 25% of the total deposited amount in favour of the applicant without any surety.

b) Further 25% of the amount be released in favour of the Applicant on furnishing a solvent surety of the like amount to the satisfaction of the Registrar (Judicial) of this Court and such surety shall be liable till the final disposal of appeal.

c) Remaining 50% of the amount be released in favour of the Applicant No.1 only after the Applicant submits the Bank Guarantee of the said amount within a period of 12 weeks. The bank guarantee shall be continously operating till the final disposal of the appeal.

d) In case the bank guarantee is not furnished by the Applicant within the period of twelve weeks, then the Registry shall deposit the said amount with a Nationalised Bank, initially for a period of three years in fixed deposit and thereafter shall go on renewing it in fixed deposit on year to year basis till final disposal of the appeal.

. Civil Application is accordingly disposed of.

(S.R.SATHE, J.) (S.B.MHASE,J.)